

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CHRISTINA MENZEL, : Case No.: 24-cv-0860

Plaintiff, :

v. :

ROADGET BUSINESS Pte. Ltd., :

et al., : New York, New York

Defendant. : October 1, 2024

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TRANSCRIPT OF STATUS CONFERENCE HEARING

BEFORE THE HONORABLE SARAH CAVE

UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff:

KISHNIRSKY GERBER PLLC  
BY: Andrew I. Gerber, Esq.  
Vanessa Sorrentino, Esq.  
27 Union Square West  
New York, New York 10003

For Defendant:

MERCHANT & GOULD P.C.  
BY: Scott P. Shaw, Esq.  
8383 Wilshire Boulevard  
Beverly Hills, California 90211

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1 THE COURT: Good morning. This is  
2 Magistrate Judge Cave. We're here for a conference  
3 in Menzel v. Roadget; case number: 24-cv-860.

4 May I have the appearances starting with  
5 plaintiff's counsel, please.

6 MR. GERBER: Good morning, Your Honor.  
7 This is Andrew Gerber, counsel for plaintiff.

8 THE COURT: All right. Good morning.

9 MS. SORRENTINO: Good morning, Your Honor.  
10 This is Vanessa Sorrentino on behalf of plaintiff.

11 THE COURT: All right. Good morning.

12 MR. SHAW: Good morning, Your Honor. Scott  
13 Shaw on behalf of defendants.

14 THE COURT: Okay. Good morning.

15 All right. So we're here to check in on  
16 the status of discovery. I have before me the  
17 parties' letter at ECF Number 72 that was filed on  
18 September 27th. So let's start with some of the  
19 documents related to the alleged infringing products  
20 that are discussed on the first page of the letter.

21 So, Mr. Gerber or Ms. Sorrentino, could you  
22 talk a little bit about what you have received as to  
23 the documents concerning the infringing products  
24 that you were looking for and what you believe is  
25 still missing.

1 MR. GERBER: Yes, Your Honor. This is  
2 Andrew Gerber.

3 We're still missing, as you noted in the  
4 letter, a huge amount of documents on this. So  
5 there's 138 infringing products at issue. We're  
6 missing documents relating to 107 of the 138.  
7 Nothing at all from those 107.

8 These products were created somehow. They  
9 were sourced somehow. We know nothing about how  
10 they were designed, who designed them. Were they  
11 designed by defendants? Were they sourced from  
12 third-party suppliers?

13 A lot of these were apparently Photoshopped  
14 either by hand or using AI. We don't have any of  
15 that information, and we have allegations in the  
16 complaint about use of AI in modifying the images.

17 So, yeah, at this point, we are just  
18 missing all documents related to the vast majority  
19 of the products at issue.

20 THE COURT: Okay.

21 Mr. Shaw?

22 MR. SHAW: I mean, I've asked my client for  
23 the documents that they have. And at the time,  
24 whatever products that would have been created  
25 in-house, my understanding is the documents were not

1 kept in the ordinary course of business and don't  
2 exist.

3 THE COURT: Okay.

4 MR. SHAW: So, you know, I mean, we're  
5 continuing to look -- my clients -- continuing to  
6 search and ask people, but it's not that I'm  
7 withholding any documents.

8 THE COURT: Okay.

9 MR. SHAW: I think that Mr. Gerber has  
10 speculated with respect to -- something with respect  
11 to AI. I suppose what I could try to talk to my  
12 client about, or we could talk about today is, you  
13 know, to the extent documents would have existed and  
14 we can find out the program that the documents --  
15 or, sorry, that the designs would have been created  
16 on, we could, perhaps, provide some information  
17 about those programs. For example, like Photoshop,  
18 if that program was used, we could try to  
19 investigate.

20 THE COURT: Okay.

21 MR. SHAW: But it's not something that I  
22 have, that I can produce, that we're withholding.

23 THE COURT: Okay.

24 Mr. Gerber, have you served interrogatories  
25 with respect to these issues as well?

1           So, obviously, you know, Mr. Shaw can't  
2     produce documents that don't exist, and, you know,  
3     there may be inferences to be drawn from that or  
4     not. But have you served interrogatories that might  
5     get at answering the question about whether AI was  
6     used or how the products were designed that Mr. Shaw  
7     could in consultation with his client at least get  
8     answers for you?

9           MR. GERBER: Yeah. Well, Your Honor, we  
10    served the initial interrogatories that comply with  
11    the Southern District's rules that were fairly  
12    limited. You know, we can serve additional ones.

13           But the issue really is about just figuring  
14    out how these were created. If it wasn't AI, it was  
15    clearly Photoshopped. As shown in the complaint,  
16    there's a composite image from a number of my  
17    client's original works that was somehow fused  
18    together. It was done either using artificial  
19    intelligence or someone sat in front of a computer  
20    and used Photoshop and did it. Either way, there's  
21    going to be documentation of that. There's going to  
22    be files that were saved. And we'd like to see how  
23    that was done and who did it and what their process  
24    was and why they did it. And there's --

25           THE COURT: Why don't we just save this for

1 the deposition if Mr. Shaw is saying he doesn't  
2 have -- his client doesn't have documents.

3 Obviously, you can explore that and test it  
4 and get a representation about it under oath, but  
5 we're, sort of, spinning our wheels here on this  
6 point. You know, Mr. Shaw, as an officer of the  
7 Court is representing he's asked the client, but the  
8 client didn't keep those documents, so we need to  
9 move on and find out what our other options are.

10 MR. GERBER: Your Honor, so apart from just  
11 this, the AI and the Photoshop issue, as to 107 of  
12 the 138 products, we have no documents at all. And  
13 so, you know, I'm willing to give -- and Mr. Shaw,  
14 if I understand correctly, has represented that he's  
15 still talking to his client and have him look for  
16 more documents.

17 THE COURT: Right.

18 MR. GERBER: These requests were served in  
19 May. We're happy to give defendants more time to  
20 find these if they need it, but, you know, I'm  
21 reluctant to move ahead with depositions until we  
22 have any documents at all as to the vast majority of  
23 these products. We need the documents to question  
24 the witness.

25 THE COURT: If they don't exist,

1 Mr. Gerber, what are we going to do? We can't wait  
2 around forever, hoping that Mr. Shaw's client might  
3 find a document.

4 Now, you know, the risk that he runs is he  
5 produces his document and they find documents after  
6 the deposition, his client may have to sit down  
7 again and, you know, we might have to reopen the  
8 deposition. But, you know, have a cutoff, a fact  
9 discovery cutoff of November 27th. So it's up to  
10 you, but we need to move this forward.

11 MR. GERBER: I defer to Your Honor. I will  
12 note that we have several other cases pending  
13 against these defendants on behalf of different  
14 plaintiffs --

15 THE COURT: Right.

16 MR. GERBER: -- have faced the same exact  
17 issue. And in those cases, defense have been  
18 ordered to produce these documents. And lo and  
19 behold, after being ordered to do so, they suddenly  
20 are able to find these documents.

21 THE COURT: Well, what did you do? Move --

22 MR. SHAW: That's not true.

23 THE COURT: Well, yeah, did you move to  
24 compel or what?

25 MR. GERBER: We did. In fact, in one case,

1 in *Keller* before Judge Netburn, we did move to  
2 compel and actually were granted sanctions in that  
3 case. So we've gone through this. And so I  
4 understand what Your Honor is saying. It's just,  
5 we've been through this before with these exact same  
6 defendants in recent weeks and have had the same  
7 thing said, and then have had documents produced  
8 after they've been ordered to do so and have been  
9 sanctioned for failure to do so.

10 THE COURT: All right. Well, I don't have  
11 those orders before me, and I don't have a motion to  
12 compel. And I really don't want to have to decide a  
13 motion to compel because it's going to have -- that  
14 will take time and will only lead to further delay,  
15 and I really want to move you forward to deposition.

16 So, Mr. Shaw, what's going to happen here  
17 with these documents? If I order you to produce  
18 them, are they miraculously going to show up?

19 MR. SHAW: I think what -- we're talking a  
20 little bit apples and oranges. I am not aware of  
21 another case where there's an allegation that my  
22 client actually created the designs. The other  
23 cases Mr. Gerber is referring to are cases where  
24 third parties had created and uploaded products to  
25 the SHEIN website.



1           So what we're talking about now, as I  
2     understand it, was the speculation or allegations  
3     that there was potentially some AI or Photoshop  
4     program used to create certain designs. And I've  
5     asked my client for those documents to the extent  
6     they exist, and I haven't received any, and my  
7     understanding is they didn't (audio distortion).

8           So, you know, with respect to the other  
9     types of documents, I mean, we've gone through a  
10    list of many documents that we have produced. I did  
11    note that there was an error in the transactional  
12    data that I produced to Mr. Gerber. We conferred  
13    about it. There was a cutoff of the data, and it  
14    only produced the first 100,000 transactions, so  
15    I've asked my client to rerun that.

16           THE COURT: Okay.

17           MR. SHAW: The problem I'm having this  
18    particular week is, it's the national holiday week  
19    from China. It's, like, national -- they call it,  
20    like, National Week or Golden Week. So I know we're  
21    trying to move quickly. Just my hands are a little  
22    tied because pretty much all the business people in  
23    China are trying to take off this week or are off  
24    this week.

25           But I, like Mr. Gerber, would like to

1 have -- and like the Court, I would like to have the  
2 issues resolved without a motion to compel. There  
3 were certainly different issues and circumstances in  
4 those cases, but, you know -- and I don't want to  
5 ask for too much time. And I don't want to delay it  
6 either, but I would like maybe, you know, before we  
7 move forward to have -- you know, give us another  
8 chance to try to get the documents that we at least  
9 know that are not complete, like, for example, the  
10 transaction record, and get those over to  
11 Mr. Gerber. And then if he wants to take a  
12 deposition, that's fine.

13 And then maybe, like, the end of next week,  
14 schedule one more call to see if we're making better  
15 progress. And if we need more time for discovery  
16 and for depositions, like, I'm willing to do it.  
17 I'm willing to do whatever we can do to try to  
18 resolve it, to not -- and Mr. Gerber has been very  
19 eager to get a motion to compel on file, I'm not. I  
20 would like to just try to get it resolved. And I  
21 just apologize for any delay on our end.

22 THE COURT: Yeah. I mean --

23 MR. GERBER: If I may, Your Honor --

24 THE COURT: Let me just say that filing a  
25 motion to compel just brings everything to a

1       screeching halt because then I have to look at the  
2       briefing, and it takes at least three weeks to get  
3       the briefs in and then for me to decide it, so then  
4       you lose a month by filing a motion to compel.

5               I will say, Mr. Shaw, it is odd to me that,  
6       if there are 138 products, that you have no  
7       documents about 107 of those. I realize there may  
8       not be a document that says we used AI to create  
9       this, but it seems odd to me that for 107 products,  
10      there's nothing about how those were designed and  
11      created. It's just -- it's odd to me.

12             And, you know, if your client doesn't have  
13      documents, that may be the case, but you are also  
14      then looking at spoliation and adverse inferences  
15      from that. So, you know, potentially. I'm not  
16      ruling on that. I'm just -- obviously, you know,  
17      that's the risk of your client saying that they  
18      don't have any documents about key issues in the  
19      case. I know you're aware of that.

20             MR. SHAW: Yes. Understood.

21             THE COURT: Okay.

22             Mr. Gerber, sorry, you wanted to add  
23      something?

24             MR. GERBER: Yes. Thank you, Your Honor.

25             Just to respond, the first thing I said on

1     this call was, we're willing to give defendants more  
2     time to, you know, avoid motion practice and let  
3     them have a chance to search and make sure they get  
4     everything. I'm fully on board with doing that.  
5     And as Your Honor noted, and just to be clear, we're  
6     not just talking about AI and Photoshop documents.  
7     Any documents about the sourcing creation. If these  
8     were sourced, they must have gotten them somewhere.

9             Anything. We have nothing on 107. And so  
10     all I'm asking is for really any documents about  
11     those 107 products. And if it's Golden Week in  
12     China and it's, you know, Jewish holiday week here,  
13     and next week if defendants need more time, you  
14     know, I'm fine doing that, if the Court is on board,  
15     and avoiding motion practice.

16            THE COURT: Okay. Well, here's --

17            MR. SHAW: Yeah, I agree. I agree with  
18     that.

19            THE COURT: Okay.

20            MR. SHAW: More time would be very helpful  
21     for both parties.

22            THE COURT: All right. Well, we have some  
23     other categories to talk about, but we'll talk about  
24     deadlines, sort of, when we get to the end. Let's  
25     talk about the universe of types of documents that

1 are in dispute, and then we'll talk about setting a  
2 deadline for giving the defendants, kind of, one  
3 last chance to look for these. And then, you know,  
4 after that, sort of, all bets are off and we're  
5 moving forward.

6 So another category concerns revenues,  
7 Mr. Gerber. Tell me what it is you're looking for  
8 and why it is you need it.

9 MR. GERBER: Oh, we can jump ahead to  
10 revenues, Your Honor, but there was -- the  
11 communications are also missing too, but I'm happy  
12 to take that in any order that you would like.

13 THE COURT: Okay. Sorry. I didn't mean to  
14 skip through that.

15 So which types of communications?

16 MR. GERBER: So plaintiff, Ms. Menzel,  
17 communicated with defendants over e-mail for five  
18 years about infringement, over e-mails and DMs on  
19 social media. We've received none of these  
20 communications on defendants' end. These are  
21 documents that we know existed because we have  
22 copies of them. We imagine that there were then  
23 discussions internally once they received these  
24 communications, and we would need to see those  
25 internal communications as well. We've received

1 nothing.

2 THE COURT: Okay.

3 Mr. Shaw, have you looked for these?

4 MR. SHAW: Yeah. So we have reviewed --  
5 first of all, we looked -- there's multiple  
6 different -- sorry. Let me start over.

7 From plaintiff's production, they produced  
8 e-mail correspondence that took place between  
9 plaintiff and various accounts and individuals, also  
10 some social media communications between them and my  
11 client. I have asked. Again, some of the older  
12 communications, I don't believe they exist. For  
13 some of the more recent communications, I believe  
14 plaintiff has those because they produced them, but  
15 I've asked my client to reproduce those as well as  
16 other -- we only just recently conferred about this.  
17 And, again, it's Golden Week, so I haven't heard  
18 back -- but as well as internal communications  
19 relating to those communications is what Mr. Gerber  
20 asked me to ask my client, and I have, and I don't  
21 have them yet.

22 THE COURT: Okay. All right. Well, we'll  
23 put that on the list of --

24 MR. SHAW: I don't expect it will be an  
25 issue. I don't object to producing those or

1 producing a privilege log.

2 THE COURT: Okay. Great. Well, we'll put  
3 that on the list of things that you're going to  
4 continue working on and for which we'll be setting a  
5 deadline. Okay.

6 Now, revenues, Mr. Gerber?

7 MR. GERBER: Yes, Your Honor. Thank you.  
8 Appreciate it.

9 THE COURT: Yeah, so just describe to me  
10 which revenues you're looking for and why you need  
11 it.

12 MR. GERBER: Yes, Your Honor.

13 So the reason we need it is because this is  
14 critical for the deterrence and statutory damages  
15 analysis. These are billion-dollar companies who  
16 have been, you know, as alleged, stealing from an  
17 artist for years and have created 138 infringing  
18 products.

19 And there's significant case law in this  
20 district, in this circuit, that confirms that  
21 defendants' size and financial assets are relevant  
22 to determining statutory damages. It goes to  
23 deterrence not just as to this entity, but as to  
24 potential other future entities. It's a critical  
25 factor. And, you know, that defendants' size,

1 financial assets are "highly relevant to statutory  
2 damages calculation."

3 We had a meet-confer about this with them  
4 in August, with defendants in August, and Scott's  
5 colleague on that meet and confer said that they  
6 would on this issue wait and see what happened in  
7 the other case I mentioned before Judge Netburn.

8 Judge Netburn in that case, in fact,  
9 ordered them to produce -- we agreed to produce a  
10 stipulation. She ordered it. And they did  
11 stipulate to this amount. We asked them recently,  
12 would you also stipulate to that here? And they  
13 refused. And that's where we are.

14 THE COURT: Okay.

15 Mr. Shaw, why can't we do a similar  
16 stipulation here?

17 MR. SHAW: Well, let me try to correct the  
18 record a little bit.

19 It wasn't something that was -- we had  
20 negotiated with Mr. Gerber to propose a stipulation  
21 that we had agreed to. It wasn't something that the  
22 judge ordered us to do. We didn't agree that it was  
23 relevant in that case for a number of reasons. We  
24 discussed it on the record. We discussed the case  
25 law, which doesn't support Mr. Gerber. It supports



1 us not having to do what he's asking us to do.

2 We then proposed the stipulation. He  
3 didn't find it to be sufficient. He didn't agree  
4 with it. No stipulation was ever entered because we  
5 did not come to an agreement on the stipulation.  
6 The one we proposed was not acceptable to Mr. Gerber  
7 in that case.

8 And my client has decided, and we've  
9 discussed it, that it's not relevant. We've looked  
10 at the case law in the Second Circuit. We cited the  
11 case law in our letter, and it's not relevant in the  
12 analysis of statutory damages.

13 You're talking about the overall size of  
14 businesses in a copyright case to determine whether  
15 there's sufficient, like, deterrence. I think  
16 there's other means to accomplish the goal that  
17 Mr. Gerber is looking to accomplish than trying to  
18 ask my client to dig through financial records and  
19 try to come up with stipulations that we tried to  
20 last time and it didn't work. It failed.

21 THE COURT: Are your clients public? Are  
22 they publicly held?

23 MR. SHAW: No, they are not.

24 THE COURT: Is their revenue otherwise  
25 public anywhere?

1 MR. SHAW: I don't think -- not in a  
2 verifiable format. I believe that if you were to  
3 Google -- you know, do a Google search, you could  
4 find things, but I don't know if that's accurate.

5 I mean, I suppose, you know, Mr. Gerber  
6 could, you know, introduce, you know, evidence from  
7 Google searches and things like that into the  
8 record, you know, at trial for the trier of fact  
9 and, you know, try to get them admitted under 201 or  
10 some other way to try to make his arguments, but  
11 having my client bear the burden of going to the  
12 expense and the burden and the trouble of trying to  
13 put together these revenue stipulations in this type  
14 of a case is unheard of. I don't think there's any  
15 precedent for it, to be honest. I haven't seen a  
16 case that's ever been ordered.

17 THE COURT: Okay. I'll let you each put in  
18 two-page letters on this issue. So we'll set the  
19 dates for that at the end of this call, and then  
20 I'll make a ruling on it at our next conference,  
21 okay?

22 MR. SHAW: Okay. Thank you, Your Honor.

23 THE COURT: Okay. Next issue is, I guess,  
24 just timing, Mr. Gerber?

25 MR. GERBER: Yes.

1 THE COURT: I'm on letter, Item 3.

2 MR. GERBER: Yeah, I mean, as we discussed,  
3 we're happy to give defendants additional time  
4 because of the Chinese holiday, and we have Jewish  
5 holidays over the next two weeks. If they need more  
6 time, we're open to doing that.

7 THE COURT: Okay.

8 Mr. Shaw, so on page 2 of the letter, the  
9 categories are global sales data, vendor portal  
10 screenshots, corporate relationships and documents  
11 that don't show the SKU number.

12 What's the status of your investigation of  
13 these issues?

14 MR. SHAW: Well, I think the first thing,  
15 you know, we were on -- so we've got the different  
16 points. You were talking about timing and point  
17 number 3. I think we had proposed November 1st to  
18 complete what we've agreed to produce.

19 And then turning to the issue that you just  
20 raised, I don't think we are agreeable to produce  
21 that type of information for the reasons that we set  
22 forth, you know, partially in our letter, but that  
23 we could brief further if Your Honor would like. I  
24 think it's point 4 on page 5.

25 THE COURT: The corporate relationship or

1 something else?

2 MR. SHAW: I mean, the corporate  
3 relationships in terms of just, like, general  
4 corporate documents that get filed, those are fine.

5 THE COURT: Okay.

6 MR. SHAW: With respect to the, you know,  
7 portal databases and, you know, internal dealings  
8 between the parties, I mean, that's just way beyond  
9 anything that would ever be required in a copyright  
10 case. It's overly intrusive and unnecessary for any  
11 purpose, for any claim, defense, damages, et cetera.

12 So, you know, we would not -- we would  
13 object to producing that information. We would be  
14 happy to, you know, further detail our position in a  
15 letter brief or whatever the Court would like to  
16 see.

17 THE COURT: Mr. Gerber, what do these  
18 vendor portal screenshots show, the ones that you  
19 have, and why do you need more?

20 MR. GERBER: Well, I guess -- I think we're  
21 jumping around a little bit here. Just to be clear,  
22 I think we're conflating some issues here. We  
23 jumped past the product reviews. And then there's  
24 also the look into the servers, and then corporate  
25 documents showing the relationship between the

1 defendants and the respective roles each have and  
2 any of the agreements of the defendants.

3 They have not moved to dismiss any  
4 defendants. These are all jointly and severally  
5 liable. We're entitled to see how the money flows  
6 between the defendants and each defendants'  
7 respective responsibility for the alleged  
8 infringement here. You know, I don't think those  
9 were addressed.

10 As to the portals, again, in the Keller  
11 lawsuit, Judge Netburn ordered a standalone version  
12 of the portal to be produced to plaintiff in that  
13 case because defendants were unable to produce  
14 screenshots of these portals. These portals are  
15 essentially what vendors do when they upload files  
16 and when they go to sell products on the SHEIN  
17 website.

18 So it's from starting the process of  
19 uploading documents, uploading information,  
20 uploading photographs, and then going through the  
21 process to get it to where it's listed on the SHEIN  
22 website. This is the core information and documents  
23 about how that process happens and what happens in  
24 that process. It's critical to understanding, you  
25 know, really what happens with SHEIN, and do they

1 review the products that are being put on their  
2 website?

3 And without having those documents in that  
4 case, Judge Netburn ordered a standalone portal  
5 produced so that we could, ourselves, examine that  
6 portal. You know, our suggestion would be that the  
7 same thing happen here. And in that case, that was  
8 the easiest way of accessing that information.

9 THE COURT: What do you mean by "standalone  
10 portal"?

11 MR. GERBER: The defendants were able to  
12 provide us a link. So the portal -- there's also  
13 multiple portals. And at this point, because of the  
14 lack of documents, it's unclear if they're the same  
15 portals. But in that case, defendants -- there's a  
16 live portal that defendants have that actual vendors  
17 can use to upload documents and put products on  
18 their site.

19 Defendants in that case were able to  
20 provide us with a link to a standalone -- so, sort  
21 of, an offline copy of the portal -- so that we  
22 could, sort of, go in and look and see how it  
23 operated using that copy, standalone copy, that they  
24 provided for us. And they were able to do that in  
25 that case. I don't see why they can't do that here.

1 THE COURT: I still don't understand why  
2 that's helpful to your claim.

3 MR. GERBER: We have no idea what SHEIN is  
4 doing between discussing a vendor coming to SHEIN  
5 and wanting to post the infringing products on their  
6 site and the product appearing on the website. We  
7 have no idea what happens in between in this case.  
8 We've had access to it in the other case, but in  
9 this case it hasn't been produced.

10 We also don't know how they work with  
11 suppliers, what they ask of suppliers, who provides  
12 the photographs, who sets the pricing. We have none  
13 of this information. Who designs it? You know,  
14 what aspects of the products are selected? Who  
15 selects the product information? Is it SHEIN? Is  
16 it the vendors?

17 We have none of that information. That all  
18 goes to willfulness. That goes to willfulness. If  
19 SHEIN is involved in this process and knows about  
20 this and is not taking proper action to screen for  
21 IP issues, then that's willful infringement. This  
22 is critical to the willful infringement analysis.  
23 And we have numerous statutory damage claims. That  
24 determines the range of statutory damages.

25 THE COURT: Mr. Shaw?

1 MR. SHAW: I mean, these sound like great  
2 questions for a 30(b)(6) witness to ask rather than  
3 counsel for the client. I don't want to be, you  
4 know, under oath testifying about my client, but I  
5 will say --

6 THE COURT: I'm not. I'm just asking you  
7 to tell me about documents and information that your  
8 clients have that would answer that.

9 MR. SHAW: Yeah, yeah, yeah. No, I -- yes.  
10 I was just commenting that those questions seem to  
11 be great questions that he could ask my client  
12 directly.

13 But we have a database called, you know,  
14 GMP and an STMP where there's product upload  
15 screenshots. We have produced those. So I'm a  
16 little confused them saying that they have nothing.  
17 There was some quality-control issue that we had  
18 identified, so we're rerunning those to produce  
19 better-resolution images for those screenshots of  
20 the databases. And we've produced a number of other  
21 documents that do explain the process that  
22 Mr. Gerber is claiming to have no knowledge about  
23 whatsoever regarding the product review and the  
24 posting on the website. So we've also produced the  
25 website terms and conditions themselves, which



1 explain a lot of this information. And then, you  
2 know, additional information can be asked as  
3 questions.

4 But, yes, there are screenshots for portals  
5 that need to be reproduced in a better image  
6 quality, and we will do that.

7 THE COURT: All right. Well, I'm not going  
8 to order that the standalone portal be produced at  
9 this time, pending what it is Mr. Shaw is describing  
10 that would be reproduced.

11 Exactly what, in terms of the corporate  
12 relationship, is it that you're saying that you will  
13 produce?

14 MR. SHAW: Just the, you know, inner  
15 workings between the companies. Any, like, you  
16 know, highly proprietary, confidential information  
17 between, sort of, corporate entities in the case  
18 that don't have any bearing on this case.

19 I mean, we'll produce the -- the products  
20 in this case are all sold on websites. Each of the  
21 websites have terms and conditions that explain the  
22 relationship between the party hosting the website  
23 and the corporate entities for the defendants in  
24 this case. I think what Mr. Gerber is asking for is  
25 information above and beyond that, which I don't

1 think is relevant or necessary to any claim defense  
2 in this case.

3 THE COURT: What about any policies or  
4 procedures though? Do any of your clients maintain  
5 something about what's done with a new product  
6 that's presented to SHEIN and how it's -- what your  
7 client does to review and decide whether to put it  
8 up on one of the websites?

9 Is there some kind of policy and procedure  
10 document there?

11 MR. SHAW: Yes. We've produced those. We  
12 have policies and agreements on the website. We  
13 have terms and conditions. We have an IP notice.  
14 We have different policy things we produced.

15 THE COURT: Okay.

16 MR. SHAW: I guess we have some archived  
17 terms and conditions that we can produce in this  
18 case that have not been produced. We could get  
19 those.

20 THE COURT: Okay.

21 MR. SHAW: I think they're accessible under  
22 the archive's website too.

23 THE COURT: Well, I think if it's  
24 relevant -- if those were applicable during the time  
25 period that's relevant to the plaintiff's claim --

1 MR. SHAW: Yeah. Yeah, we'll get those  
2 produced then. Yeah.

3 THE COURT: So why don't you produce those.  
4 But aside from that just, like, is there  
5 any type of, like, an organizational chart that  
6 exists? Do you know, Mr. Shaw?

7 MR. SHAW: Sort of. And Mr. Gerber is  
8 aware of it. I mean, I'd have to check to see if we  
9 produced that in this case. I don't know if it  
10 would cover every entity that he's concerned with  
11 and every website, but we've produced it in the  
12 past.

13 THE COURT: Okay. Let's produce that in  
14 this case as well. If you have it, it shouldn't be  
15 any burden to produce it.

16 MR. SHAW: Okay. Yeah.

17 MR. GERBER: Your Honor, if I may, just  
18 to -- the fact that these documents and information  
19 may be confidential, as Mr. Shaw noted, is not a  
20 reason not to produce them. Just want to note that  
21 first.

22 Secondly, we had this exact same issue in  
23 the *Keller* case in front of Judge Netburn, and  
24 defendants were ordered to produce a range of  
25 documents, not just the org chart. But, as Mr. Shaw

1     noted, there are multiple websites at issue. We  
2     still don't know what entities are controlling what  
3     websites. We don't know about IP licensing between  
4     the entities, who's in charge of distributing.

5             There's different infringing products being  
6     sold in different websites, and it's not just all  
7     from Roadget. It's from all these different  
8     entities, and we need to know which entities are  
9     responsible for which components of the conduct  
10    here. We know none of that at this point in this  
11    case.

12            In the other case, in *Keller* before Judge  
13    Netburn, they were ordered to produce information.  
14    And, you know, I'm not hearing any reason why that  
15    shouldn't be produced here. They already have that  
16    information. They could just produce it here.

17            THE COURT: Is that the case, Mr. Shaw?

18            MR. SHAW: Well, Mr. Gerber keeps going  
19    into the *Keller* case. And I hate to -- I never like  
20    to try to litigate a case within another case  
21    because it opens up more issues in more cases.

22            I will say this, that we have corporate  
23    documents that we can produce. Beyond that, what I  
24    don't hear Mr. Gerber saying is why it matters,  
25    other than just to harass and burden my clients.

1 Like what's the relevance to any of this, to any  
2 claim or defense? Like, it doesn't --

3 THE COURT: Well, because it matters  
4 which --

5 MR. SHAW: When you're --

6 THE COURT: -- which defendant was involved  
7 with respect to which product, and so there may be  
8 products that are more, you know, on one website run  
9 by one defendant than another website. And so, in  
10 terms of allocating damages among the defendants, I  
11 can see --

12 MR. SHAW: Yeah. I mean, we have that  
13 information. That information is available through  
14 the documents that we've produced in the terms and  
15 conditions. That's all available to him. And,  
16 frankly, as a legal matter, it shouldn't matter when  
17 you have multiple defendants that aren't disputing  
18 that, if there's liability, it will be joint and  
19 several liability. So if there's infringement as to  
20 one, they will all be joint and severally liable.

21 I don't understand what -- this would be a  
22 very good issue for a letter brief, because, you  
23 know, other than the exceptional case in *Keller* that  
24 Mr. Gerber keeps mentioning, this is the type of  
25 information that is clearly overly burdensome and

1 not likely to lead to discoverability of any  
2 relevant information in this case, and I would  
3 appreciate an opportunity to brief it because it's  
4 not --

5 THE COURT: No. Just because I told you  
6 you could brief one thing is not an invitation to  
7 shove a bunch of other things in there.

8 So you're going to look for the terms and  
9 conditions that are archived and apply to the time  
10 period relevant to the plaintiff's claims and  
11 produce those, and you're going to produce the org  
12 chart. And that's all I'm going to order for now.

13 Mr. Gerber can review those. And if he  
14 still thinks there's something that he needs, then  
15 we'll talk about it next time, but in the meantime,  
16 let's focus on that, okay?

17 MR. SHAW: Okay. I will.

18 MR. GERBER: Your Honor?

19 THE COURT: Yes.

20 MR. GERBER: Your Honor, to be clear,  
21 Mr. Shaw didn't even answer your question. To  
22 answer the question, yes, they were ordered to  
23 produce this in the other case, in *Keller* by Judge  
24 Netburn, and they have those documents. So he's  
25 making burdensome arguments. They already have

1     these documents.  They've already produced them,  
2     so --

3             THE COURT:  Neither of you are accurately  
4     representing what Judge Netburn has done, so I'm  
5     going to have to go look at that and then decide  
6     whether it applies in this case.  I'm trying to get  
7     through what we have to do today --

8             MR. GERBER:  We would --

9             THE COURT:  -- so let's get through what we  
10    have today.  Between now and next time, I will look  
11    at what Judge Netburn has done in the other case and  
12    see to what extent it is relevant here.

13            MR. GERBER:  I would strongly encourage you  
14    to do so, Your Honor.  Thank you.

15            THE COURT:  Well, you never mentioned it  
16    before.  You wrote me a joint letter, and you didn't  
17    mention any of these orders that Judge Netburn  
18    entered.  It certainly would have been helpful if  
19    you had done that before today.  If all these --

20            MR. GERBER:  They were entered two weeks  
21    ago in the interim, Your Honor.

22            THE COURT:  No.  Your letter came in on  
23    September 27th, Mr. Gerber.  You could have  
24    mentioned these orders that Judge Netburn had  
25    entered if you thought that they were relevant to

1 any of the issues here. So you're sandbagging me a  
2 little bit, and it's a little bit unfair. And so I  
3 want to understand exactly what Judge Netburn was  
4 presented with and what she ruled. And I'm going to  
5 do that independently because I don't trust either  
6 of you to accurately represent to me exactly what it  
7 is she did.

8 All right. What else, if anything, on item  
9 number 3 on the issues, Mr. Gerber?

10 MR. GERBER: That's it for the documents.  
11 The only remaining issue is the amended complaint  
12 and the deposition schedule.

13 THE COURT: Okay. All right. So you want  
14 to amend your complaint, Mr. Gerber?

15 MR. GERBER: Yeah. Oh, yes, we do, Your  
16 Honor. We received a deposit copy from the  
17 Copyright Office yesterday, actually, and we were  
18 waiting on that so that we could amend the  
19 complaint. So now that we have it, we intend to  
20 amend the complaint based on that, that we received  
21 from the Copyright Office.

22 THE COURT: Okay.

23 Mr. Shaw, do you have a position on that,  
24 or do you want to see the complaint, the proposed  
25 amended complaint?



1           MR. SHAW: I would like to see it, but the  
2 rules for amending complaints are very liberal. We  
3 would stipulate.

4           THE COURT: Okay. All right.

5           So, Mr. Gerber, how about you -- we'll talk  
6 about a deadline for this, but how about you draft a  
7 proposed amended complaint, send it to Mr. Shaw and  
8 if you can agree, then you can just submit it on  
9 consent, okay?

10          MR. GERBER: That sounds good to the  
11 plaintiff.

12          THE COURT: Great. Okay.

13          Okay. And then, I guess, the last thing  
14 you said is the deposition of the plaintiff?

15          MR. GERBER: That's correct, Your Honor.

16          As we've been discussing, we still are  
17 missing a huge amount of documents in this case. We  
18 think it's premature to schedule depositions at this  
19 point. We absolutely want to schedule depositions,  
20 but I think it's best to wait until we resolve some  
21 of these discovery issues until we do so.

22          THE COURT: Right. But what's in the  
23 defendants' documents is not knowledge that your  
24 client has. So I understand you want more documents  
25 from the defendants, and we're going to work on

1       that, but I don't see how it affects when the  
2       plaintiff sits for her deposition.

3               I mean, there's no way defendants are not  
4       going to have to sit for deposition. It's not like  
5       she's going to be left hanging there, the only  
6       person having been deposed. But, I mean, we can  
7       certainly talk about scheduling. Obviously, it's  
8       not going to happen tomorrow.

9               MR. GERBER: Right.

10              Well, the other issue is that we noticed  
11       defendants' depositions months and months ago and,  
12       you know, put placeholder dates and encouraged  
13       defendants to discuss availability and dates with  
14       us, and so that's all we're asking now. But, you  
15       know, for defendants, it's sort of a demand that we  
16       proceed with our deposition of plaintiff, even  
17       though we already noticed it months before. You  
18       know, I think we're just encouraging a discussion  
19       and schedule that makes sense for everybody.

20              THE COURT: Mr. Shaw?

21              MR. SHAW: I mean, if Mr. Gerber wants to  
22       wait to take my client's deposition until he has all  
23       the documents, that's fine. We don't need to wait  
24       to take his client's deposition. We'd like to  
25       proceed with it at the soonest available date, but

1 we don't have any. He has not provided any dates.

2 I'm happy to work with him on scheduling my  
3 clients' deposition any day he would like. He's the  
4 one that wants to wait, but we don't want to, and we  
5 don't have any obligation to wait. We want to take  
6 the deposition as soon as possible, so I just kindly  
7 asked for alternative dates and he won't give me  
8 any.

9 THE COURT: I mean, this is ridiculous,  
10 really. Both of you, should be ashamed of  
11 yourselves.

12 All right. Plaintiff's deposition is not  
13 going to happen tomorrow, even though it was noticed  
14 for tomorrow, but the parties need to meet and  
15 confer between now and the next time we talk. And  
16 we'll talk about exactly when that's going to be.  
17 And by the next time we talk, I want you to have  
18 firm dates for all the depositions, both plaintiff  
19 and the defendant. And if you can't do it, then  
20 I'll set them. And the dates that I pick are going  
21 to be the dates that they happen. I don't care what  
22 people's schedules are. So that's what you get for  
23 not being able to be civil to each other.

24 All right. Mr. Gerber, any other discovery  
25 issues that from the plaintiff's perspective you

1 want to raise today?

2 MR. GERBER: I guess the only other -- the  
3 only issue is on product review process. They've  
4 produced policies that these reviews happen, but  
5 there's no documents that show, you know, what  
6 happened from these reviews and the result of them,  
7 and so we are still missing some of those documents.  
8 But I'm happy to put that in a basket of things that  
9 defendants are still going to look for, if that's  
10 amenable to defendants.

11 THE COURT: Okay.

12 Mr. Shaw, is that something you're still  
13 looking for?

14 MR. SHAW: Yeah, that's fine. It can ...

15 THE COURT: All right. Okay.

16 MR. GERBER: The product review, the IP  
17 library and then there's a U.S. audit team that's  
18 all, sort of, bundled together in this, and we're  
19 happy to give defendants more time to look for that.

20 THE COURT: Okay. All right.

21 So, Mr. Shaw, you think -- I'm going to do  
22 a laundry list of things in the post-conference  
23 order of all the things that we've talked about  
24 today, but do you think by November 1st, reasonably,  
25 we could know one way or the other whether you've

1 exhausted your options for finding everything, and  
2 you'll have produced them by then?

3 MR. SHAW: Yeah. That's why I selected the  
4 date -- it was a little ways off -- because we have  
5 Golden Week and all this type of thing. But by the  
6 time we have our next call, I should have a better  
7 update on these open items.

8 THE COURT: Okay. All right.

9 So how about we plan to talk again. How is  
10 11 a.m. on November 7th?

11 MR. SHAW: November 7th? That's fine.

12 THE COURT: It's a Thursday.

13 And then the only issue that I've said that  
14 we need briefing on is the revenue issue.

15 So, Mr. Gerber, could you get your letter  
16 to me, no longer than three pages, by October 15th?

17 And then, Mr. Shaw, could you get your  
18 response to me by October 29th?

19 MR. SHAW: Yes, Your Honor. That works.

20 THE COURT: Okay. And then my hope would  
21 be to make a ruling on that when we talk on November  
22 7th, all right?

23 MR. SHAW: Sounds good for defendants.

24 THE COURT: Great.

25 And then, if you could, put in a joint

1 letter like you did for today by November 4th, with  
2 any issues that are ripe for my consideration.

3 MR. SHAW: Works for defendants.

4 THE COURT: Aside from the revenues issue.  
5 You don't need to include that. That's ordered  
6 separately.

7 Okay. I'm sorry, Mr. Shaw, I didn't give  
8 you a chance, I guess. Are there any other  
9 discovery issues you wanted to raise?

10 MR. SHAW: No. I think we've covered them  
11 all, Your Honor. Thank you.

12 THE COURT: Okay. All right.

13 You'll see a post-conference order from us  
14 that sets out the dates that I just outlined, the  
15 deadline of November 1st for the defendant to  
16 complete its review, collection and production of  
17 the documents that we've discussed today, a joint  
18 letter with ripe issues from the parties by November  
19 4th, a conference November 7th at 11 a.m., and then  
20 a separate letter briefing schedule on the revenue  
21 issue for October 15th and October 29th.

22 Any questions about that, Mr. Gerber?

23 MR. GERBER: No, Your Honor.

24 THE COURT: Okay. Very good.

25 Mr. Shaw, anything else?

1 MR. SHAW: No, Your Honor. Thank you.

2 THE COURT: Okay. All right. Thank you  
3 very much. We'll be adjourned. Have a good day.

4 MR. SHAW: Bye.

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C E R T I F I C A T E

I, Adrienne M. Mignano, certify that the foregoing transcript of proceedings in the case of Menzel v. Roadget, et al., Docket #24CV0860 was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Adrienne M. Mignano  
ADRIENNE M. MIGNANO, RPR

Date: October 8, 2024